STATE OF MICHIGAN

COURT OF APPEALS

PETER VERVERIS and THERESA VERVERIS, as Next Friend of PHILIP VERVERIS, a Minor, Plaintiffs-Appellants/Cross-Appellees,	UNPUBLISHED May 19, 2005
v	No. 251868 Oakland Circuit Court
HARTFIELD LANES, Defendant-Appellee/Cross-Appellant.	LC No. 2002-037354-NI

Before: Griffin, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

This premises liability claim is based on injuries sustained by Peter Ververis when he slipped and fell on defendant's property as he attempted to enter defendant bowling alley from the parking lot. The jury returned a verdict in plaintiffs' favor, awarding $148,155.50 in damages. Plaintiffs appeal as of right the trial court order granting defendant's motion for directed verdict of no cause of action. Defendant cross-appeals as of right, challenging the trial court order denying its motion for summary disposition, the jury's allocation of zero percent fault to Peter Ververis, and the jury's award of economic damages. We reverse and remand for entry of judgment consistent with the jury verdict.

At the close of plaintiffs' proofs, defendant moved for directed verdict based on the open and obvious doctrine and lack of notice of the allegedly dangerous condition. The trial court took the motion under advisement, and the trial continued. After the jury returned a verdict in favor of plaintiffs, the trial court granted defendant's motion. Plaintiffs now argue that the trial court erred in granting defendant's motion because reasonable jurors could differ as to whether the condition that Peter Ververis encountered was open and obvious. We agree.

We review de novo a trial court's decision on a motion for directed verdict. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 131; 666 NW2d 186 (2003). In reviewing the trial court's ruling, we view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grant every reasonable inference to the nonmoving party, and resolve any conflict in the evidence in favor of the nonmoving party to decide whether a question of fact existed. *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). Further, we recognize the "unique opportunity of the jury and the trial judge to observe witnesses and the fact-finder's responsibility to determine the credibility and weight of the

testimony." *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003). "If reasonable jurors could honestly have reached different conclusions, [we] may not substitute [our] judgment for that of the jury." *Id*.

A premises liability claim requires that a plaintiff prove the following four elements: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; (3) causation; and (4) damages. *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999). Peter Ververis was an invitee on defendant's property at the time he fell and fractured his ankle. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000). As a general rule, a premises owner owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99, 105; 689 NW2d 737 (2004). However, this duty does not generally extend to open and obvious dangers. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). "'[W]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate harm despite knowledge of it on behalf of the invitee.'" *Id*., quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). When determining if a condition is open and obvious, we consider whether "an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon casual inspection." *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

This Court recently clarified that while the open and obvious doctrine is applicable to cases involving the accumulation of snow and ice, not all snow and ice accumulation is open and obvious as a matter of law. *Kenny*, *supra* at 106. "[I]f a snow or ice hazard is not open and obvious . . . the premises owner owes a duty to an invitee to exercise reasonable care to protect the invitee" by taking "'reasonable measures . . . within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee.'" *Id*. at 107, quoting *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975).

Peter Ververis and his companion on the night of the accident testified that the lighting was inadequate in the area where Ververis fell. Indeed, they testified that the area was so dark that they could not see the condition of the ground on which they were walking. Further, they both testified that while they were aware of the presence of snow, they were not aware of the presence of ice until after Ververis fell. See *Abke v Vandenberg*, 239 Mich App 359, 362-363; 608 NW2d 73 (2000).

Relying on *Joyce v Rubin*, 249 Mich App 231; 642 NW2d 360 (2002), defendant argues that the condition was open and obvious because Peter Ververis knew of the snow and ice in the area, and chose to traverse it anyway. Defendant points to Ververis' testimony that he was aware that it was snowing before and at the time of his fall. However, Ververis clearly testified that while he was aware of snow in the area, he had no knowledge of the presence of ice. Therefore, this case is distinguishable from *Joyce*. See *Kenny*, *supra* at 111. Further, this Court has stated that there is a significant difference between the dangers presented by snow and those presented by ice. *Id*. at 108-109.

Viewing the evidence in the light most favorable to plaintiffs, we conclude that a question of fact existed regarding whether a reasonably prudent person would have discovered the icy condition on casual inspection of the area.

We also reject defendant's argument that the trial court erred when it denied defendant's motion for summary disposition, which was also based on the open and obvious doctrine. Considering the evidence presented up to the time of the motion in the light most favorable to plaintiffs, we conclude that a genuine issue of material fact existed on the issue of the open and obvious nature of the danger presented. See *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Defendant next argues that it was entitled to a directed verdict because plaintiffs presented no evidence at trial to show that defendant was on notice of the icy condition in its parking lot. Specifically, defendant asserts that because Peter Ververis testified that he did not know how long the ice had been on the ground, there is no evidence that it existed for a sufficient length of time to put defendant on notice. We disagree.[1]

A landowner owes a duty of care to its invitees "'to exercise reasonable care to protect [them] from an unreasonable risk of harm caused by a dangerous condition of the land' that the landowner knows or should know the invitees will not discover, realize, or protect themselves against." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995), quoting *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). In addition, a premises owner is liable for injury resulting from an unsafe condition known to the premises owner, or where the condition is of such a character or has lasted for a sufficient length of time that the premises owner should have had knowledge of it. *Hampton*, *supra* at 604.

"[C]onstructive notice arises not only from the passage of time itself, but also from the type of condition involved, or from a combination of the two elements." *Kroll v Katz*, 374 Mich 364, 372; 132 NW2d 27 (1965). In *Kenny*, this Court concluded that the defendant's salting of the areas of the parking lot and the entrances before the plaintiff's arrival was sufficient to raise an issue of fact as to whether the defendant had knowledge of the snow and ice on which the plaintiff fell, because it suggested that the defendant was aware of slippery conditions on the property and, therefore, should have been aware of slippery conditions where the plaintiff fell. *Kenny*, *supra* at 114. Here, defendant's maintenance man testified that he salted defendant's premises at 4:30 p.m. on the afternoon of the accident, but that no salting or clearing was done thereafter. He further testified that when he salted, he did not salt the area where Peter Ververis fell because that area was only salted when defendant was expecting a beer delivery.[2] In addition, there was testimony that defendant's snow maintenance policies were not followed on the night of the accident, and that if followed, the parking lot would have been inspected hourly after 4:30 p.m. Viewing this evidence in the light most favorable to plaintiffs, we conclude that a

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[1] While defendant raised this as an alternative argument in its motion for directed verdict, the trial court did not address the notice issue because it granted defendant's motion based on the open and obvious doctrine. Therefore, this issue is not properly preserved for review. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). However, we will review the issue because it presents a question of law and all of the necessary facts are before us. *Id.*

[2] Defendant does not argue that Peter Ververis was traversing an area that was off limits to pedestrian customers of the bowling area. The delivery entrance was a few feet from a route between two general entrance doors in a configuration that defendant concedes is somewhat unique and, therefore, potentially confusing to first-time visitors.

question of fact existed regarding whether defendant knew or should have known of the icy condition on the premises, and that the issue was properly left for the jury to decide.

Defendant next argues that the jury's finding that Peter Ververis was not comparatively negligent was against the great weight of the evidence. We disagree. Unless reasonable minds could not differ, whether an injured party was comparatively negligent is a question for the jury. *Rodriguez v Solar of Michigan, Inc*, 191 Mich App 483, 488; 478 NW2d 914 (1991). A jury verdict should not be set aside if there is competent evidence to support it. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). Further, to determine if a verdict is against the great weight of the evidence, we look to whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Campbell v Sullins*, 257 Mich App 179, 193; 667 NW2d 887 (2003).

Because defendant presented this Court with only a cursory argument with no citation to supporting authority, it has abandoned this issue. MCR 7.212(C)(7); *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). In any event, we conclude that there was competent evidence to support the jury determination that Peter Ververis was not comparatively negligent. Defendant's owner testified that the design of the bowling center was unusual and that first-time patrons may be confused regarding where the elevator inside of the glass doors would lead them. Further, Peter Ververis and his companion that night testified that when they approached the glass doors of the bowling alley that contained the elevator, they believed they were at the wrong entrance. Both men indicated that they saw no signs indicating where the elevator would take them. Based on this evidence, the jury could have reasonably concluded that Ververis was not negligent in failing to enter through the doors by the elevator because he determined that he had to find another entrance to get to the bowling alley's lounge. Because there was competent evidence to support the jury verdict, we decline to set it aside.

Defendant next argues that the jury verdict regarding past economic damages is greater than the evidence supports. Because defendant cites no authority to support this argument, it has abandoned this issue. *Peterson Novelties, supra* at 14. In any event, we conclude that the evidence, particularly Peter Ververis' testimony concerning his earning capacity, supports the award. *Anton v State Farm Mut Automobile Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999).

We reverse and remand for entry of a judgment consistent with the jury verdict. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra